

**United States Environmental Protection Agency
Criminal Investigation Division
Investigative Activity Report**

Case Number

0506-0026

Case Title:

Ferguson Enterprises Inc.

Reporting Office:

Detroit, MI, Resident Office

Subject of Report:

Interview of (b) (7)(C) former Director of the Detroit
Department of Environmental Affairs

Activity Date:

November 26, 2008

Copies to:

Related Files:

Reporting Official and Date:

(b) (7)(C) RAC
05-DEC-2008

Approving Official and Date:

(b) (7)(C) SAC
09-DEC-2008
Approved by: (b) (7)(C) SAC

SYNOPSIS

11/26/2008 - U.S. EPA CID Special Agent (SA) (b) (7)(C) along with FBI SA (b) (7)(C) interviewed (b) (7)(C) former Director of the Detroit Department of Environmental Affairs regarding (b) involvement in the oversight of contracts or permits issued by the City of Detroit.

DETAILS

On November 26, 2008, U.S. EPA CID Special Agent (SA) (b) (7)(C) along with FBI SA (b) (7)(C) interviewed (b) (7)(C) former Director of the Detroit Department of Environmental Affairs regarding (b) involvement in the oversight of contracts or permits issued by the City of Detroit. After being informed of the identity of the interviewing agents, (b) provided the following information:

(b) (7)(C) work address: Williams Acosta PLC, 535 Griswold, Suite 1000 Detroit, MI 48226; work telephone: (b) (7)(C).

(b) graduated from the Law School at the University of Detroit in 1982. (b) then clerked for Judge Julian Cook for two years before becoming a professor and Assistant Dean at the Wayne State University Law School where (b) was employed for four years. (b) then joined the law firm Cooper Fink and Zausmer which is located in Farmington Hills, Michigan. In 1995, then Detroit Mayor (b)(6), (b) (7)(C) appointed (b) the Director of the Department of Environmental Affairs (DEA).

(b) explained that the DEA was a new department so initially (b) role as the Director was to hire and train new staff. (b) true role as the

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Director of the DEA was to represent the City of Detroit on all environmental matters, act as a liaison to the various federal, state and county environmental agencies, work on Brownfield and development issues, address illegal dumping, zoning and code enforcement issues in the city, as well as developing environmental policies for the city. In general the DEA's function was to scope out issues and developments to determine if they needed environmental permits and if the planned or on-going operations had a negative impact environmental impact on the city. Over time the DEA grew to employ twenty people, although (b) was the only attorney.

The City of Detroit has an Industrial Review Committee which was created under the zoning ordinance. The IRC is made up of various department heads, including (b) during (b) tenure. Other departments on the IRC included the Building Safety & Engineering Department (BS&E), Department of Public Works (DPW), Planning & Development, and the Fire Department. Not all of the Department heads themselves attended the IRC's but in some cases sent a designated staff person. (b) attend these meetings. The purpose of the IRC was to review and vote on applications for variances to the zoning ordinance. Each department representative weighed in on their opinions of the operator of the site, and if the group agreed to grant the variance, they would set conditions for approval of the variance. Once granted a variance, the applicant would have to deal with the individual affected departments such as BS&E.

If an applicant was denied a variance by the IRC they could file an appeal with the Zoning Board of Appeals (ZBA). The members of the ZBA were appointed by the Detroit City Council. (b) agreed with the characterization that the IRC and ZBA in essence act as a system of checks and balances since the IRC is comprised of mayoral appointees and the ZBA City Council appointees. The ZBA's function is to serve as a right of appeal for an applicant.

The Planning Commission decides all zoning issues with the input of the IRC. If the zoning issue is approved, the applicant files their applications with the appropriate department such as BS&E. If the applicant's variance is denied they can appeal to the ZBA and if they are again denied they can appeal to the appropriate court.

(b) was asked if (b) recalled being involved in discussions regarding an issue with Fast Pete's Hauling in 2004. (b) thought that this may have been a company that the Detroit Police Department had ticketed for

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illegal dumping and characterized them as a "problem child." (b) was not sure if Fast Pete's had filed for an ordinance variance with the IRC, but added that (b) files at the DEA should reflect if they did. (b) explained that the IRC would only take an action against Fast Pete's if they were trying to get a zoning variance or a new permit.

SA (b) explained to (b) that (b) was referenced in text messages reviewed by the agents specifically having to do with Fast Pete's and the IRC. (b) was asked why (b) (7)(C) the director of the BS&E would be communicating with (b) (7)(C) on the issue of Fast Pete's and the IRC. (b) stated that (b) did not know why (b) (7)(C) would have any role in the IRC or zoning issues. To (b) knowledge, (b) (7)(C) was not a liaison to any of the departments within the city, at least not officially. (b) explained that all departments had Group Leaders which they communicated with on a regular basis. Under the (b)(6), administration the DEA Group Leader was (b) (7)(C) and one other individual. During the (b) (7)(C) administration the DEA Group Leader was (b) (7)(C) who was also the head of the Planning and Development Group. (b) (7)(C) worked for (b) (7)(C) during the (b) (7)(C) years, but had also been the head of the Community and Economic Development group under (b) (7)(C)

(b) stated that (b) did not control the IRC, and characterized (b) as someone who liked to think that (b) had more influence than (b) really had. (b) went on to say that the mayoral administration did not control the IRC, but did agree with the statement that an administration could control the IRC if the department directors were amenable. (b) went on to say that (b) doesn't know why (b) thought that (b) could kill the Fast Pete's issue at the IRC, as mentioned in the text messages. (b) does not think that (b) attended the IRC meeting where the Fast Pete's application was addressed. Minutes are created and maintained of these meetings although (b) does not know the retention policy.

(b) characterized (b) as competitive with the DEA and (b) in particular. The DEA was involved in the topics which were a centerpiece of the (b) (7)(C) administration such as code enforcement, illegal dumping and Brownfield projects. (b) (7)(C) wanted to see these topics successfully addressed as they were issues which mattered to the citizens of the city. (b) however wanted the focus to be on (b) department and not the DEA.

The DEA interacts with the Detroit Water and Sewerage Department regarding issues such as watershed management and illegal sewer

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connections. (b) commented that at times the two departments were in sync with each other and at other times they were not. (b) is currently outside counsel for the DWSD.

(b) (7)(C) was hired as the Director of the DWSD during the (b) (7)(C) administration. (b) (7)(C) a career DWSD employee, was the Deputy Director under (b) (7)(C) Steve Gordon resigned as the Director after (b) (7)(C) was elected and (b) (7) was the acting director until (b) (7)(C) was hired. (b) and (b) (7) have participated in a number of internal investigations of the DWSD which were ordered by U.S. District Court Judge Fiekens who was the Special Administrator of a federal consent decree with the DWSD.

In (b) role as the Director of the DEA, (b) had an advisory role in the status of a DWSD owned facility on the east side of the city, as there were potentially responsible party issues under the Comprehensive Environmental Recovery Compensation and Liability Act. In 2003 or 2004, (b) and the DEA were also involved in the renovation of a city owned property which was renovated for the purpose of being utilized as a Homeland Security office. (b) recalled that asbestos was present in the building and (b) was involved in reviewing how and what needed to be properly abated. (b) does not recall who the contractor was for the renovation of the building. (b) did make a recommendation as to the remediation of the building and recalled disagreeing with the contractor on the costs of the environmental cleanup work. (b) characterized the contractor's proposal for work as "overkill."

The DEA was not involved in the renovation of the Book Cadillac hotel. Under the Archer administration (b) was asked to see if the city could obtain state funding for the environmental cleanup of the building. (b) explained that this site was not eligible for state funding as the remediation was for asbestos. (b) was not asked by anyone in the (b) (7)(C) administration to review the asbestos issues or contracts for environmental remediation for the Book Cadillac.

(b) reiterated that the DEA was the "new kid on the block" when it came to city departments and that while some departments cooperated with the DEA's role, others did not. It was the function of the DEA to advise the appropriate departments on the environmental regulations. The DEA insisted on review contracts to assess the capabilities and qualifications of the environmental contractors, but only some departments complied with this request. The DEA reviews paperwork

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regarding demolitions and asbestos surveys to ensure that all regulations were followed. The DEA prefers to have oversight of demolitions to make sure the process is followed and that the required forms were filled out at the appropriate stages of a project. (b) explained that the city had been involved in civil litigation with the EPA over the city's failure to consistently follow the asbestos regulations.

(b) had never heard of a private property owner handling (paying) for the demolition of a property after being issued an emergency demolition order. (b) opined that this situation could happen if the owner says they want to do the demolition themselves, and this exception may be allowable in the BS&E regulations, but (b) was not sure. (b) explained that under the city's emergency demolition order process, the property must be abandoned and deemed a public health and safety threat. The BS&E petitions City Council for approval for an Emergency Demolition Order.

(b) was never asked to review contracts, demolition or otherwise, for Ferguson Enterprises Inc. (FEI). SA (b) (7)(C) asked (b) if (b) felt this was unusual given the fact that FEI was awarded numerous demolition and construction contracts by the city during the (b) (7)(C) administration. (b) characterized contracts awarded to FEI as one of those that should have been sent to the DEA for oversight, but they weren't. The DPW, Detroit Economic Growth Council (DEGC), the Building Authority, the Housing Commission and the BS&E were some of the departments which did not comply with the DEA request for involvement. The DEA did try to work with the BS&E on developing policy for demolitions but the matter was derailed after the EPA issued a Section 114 request for information in the civil litigation case. At this point the Law Department took over policy development.

(b) was asked if (b) ever had any involvement with (b) (7)(C) or (b) company. (b) was aware that (b) (7)(C) owned an industrial hygienist company which conducted asbestos air monitoring. (b) (7)(C) approached (b) asking how (b) could obtain city contracts. (b) told (b) (7)(C) that (b) was not responsible for hiring so (b) was not the right person to talk to. (b) added that (b) was only responsible for reviewing contracts to determine if the contractor is qualified.

(b) (7)(C) formed a joint venture with an environmental consulting firm in an attempt to obtain a contract on the Riverwalk park development. On some point the two companies had a falling out and the

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environmental consulting firm did not disclose to the city that (b) (7)(C) [REDACTED] as firm was not longer a part of the joint venture. The scope of work for this contract was reviewed by (b) (7) [REDACTED] who disqualified the joint venture after learning that (b) (7)(C) [REDACTED] firm was no longer a part of the joint venture. (b) [REDACTED] may have written a letter to the joint venture explained that they were not recommending the fulfillment of the contract based on the fact that (b) (7)(C) [REDACTED] firm was not a part of the joint venture. (b) [REDACTED] clarified that the contract had been awarded by the time (b) [REDACTED] reviewed the scope of work. (b) [REDACTED] viewed (b) (7)(C) [REDACTED] company as the one holding the qualifications for the job and thus when they backed out the joint venture was no longer qualified. (b) [REDACTED] (b)(6), (b) [REDACTED] has never reviewed the qualifications of (b) (7)(C) [REDACTED] company.

(b) [REDACTED] was aware that CDM has worked on a variety of projects for the DWSD. CDM is a national level engineering and consulting firm. Wade Trim and NTH Consultants have also done a lot of work for the DWSD. (b) [REDACTED] had no knowledge of CDM hiring (b) (7)(C) [REDACTED] company as a sub contractor.

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